



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

BJG
Docket No: 7131-99
7 December 2000

YN2 [REDACTED] USNR TAR
[REDACTED]
[REDACTED]

Dear Petty Officer [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 30 November 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinions furnished by the Navy Personnel Command dated 14 February and 21 August 2000, copies of which are attached. They also considered your counsel's rebuttal letters dated 1 June 2000 with enclosures and 20 November 2000.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinions.

Specifically regarding the contested performance evaluation report for 16 March to 15 March 1997, the Board was not persuaded that it was in retribution for an incident that occurred before the reporting period, where you criticized the management style of your rater. They noted that he was not your reporting senior and, therefore, he had no right to make a statement for the record concerning any rebuttal you might submit to the report at issue. They further noted that while you indicated you intended to submit a statement, your record reflects no such statement.

Concerning the report for 25 August 1998 to 15 March 1999, the Board noted that the block 30 entry "NOT REQ [required]" appears to be erroneous, as your mid-term counseling month (September) did fall within the period. They did not accept as valid the reporting

senior's statement, in paragraph 1 of his endorsement dated 6 July 1999 on your rebuttal, that mid-term counseling was not performed as you were aboard for less than 90 days. However, they noted that Bureau of Naval Personnel Instruction 1610.10, enclosure (2), paragraph C-5 says "Counseling may actually be provided in an earlier or later month if that is more appropriate, but may not be omitted or unduly delayed." They further observed that you did receive written counseling on 25 February 1999. They found that this was sufficient to satisfy the requirement for counseling, and they were unable to find that you had no earlier counseling. In this regard, they noted that counseling takes many forms, so you may not have recognized it as such when it was provided. They were not convinced that it was wrong to counsel you or evaluate your performance less favorably for allegedly concentrating your efforts on retirement. Finally, they were unable to find that the contested report was erroneous in stating that your reports to the Bureau of Naval Personnel were incorrect, nor could they find that the report in question did not account correctly for your assignments.

Regarding the report for 16 March 1999 to 15 March 2000, the Board was not persuaded that this report was in retaliation for your application for correction of your naval record. They noted that you offered nothing to prove that your command was aware of your application.

In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosures

Copy to:
David P. Sheldon, Esq.



7121-99

DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

1610
PERS-311
14 February 2000

**MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS**

Via: PERS/BCNR Coordinator (PERS-00ZCB)

Subj: YNz [REDACTED] USNR (TA [REDACTED])

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of her performance reports for the period 16 March 1996 to 15 March 1997 and 25 August 1998 to 15 March 1999.

2. Based on our review of the material provided, we find the following:

a. A review of the member's headquarters record revealed the reports in question to be on file. They are signed by the member acknowledging the contents of the reports and her right to submit a statement. The member indicated she desired to submit a statement. No statement has been received for the report for the period 16 March 1996 to 15 March 1997. The member's statement and endorsement for the report for the period 25 August 1998 to 15 March 1999 is properly reflected in the member's digitized record.

b. Petty Officer [REDACTED] alleges the performance reports in question were inconsistent with past performance, bias, and inaccurate. In viewing petitions that question the exercise of the reporting senior's evaluation responsibilities, we must determine if the reporting senior abused his/her discretionary authority. For us to recommend relief, the petitioner has to show that either there is no rational support for the reporting senior's action or that the reporting senior acted for an illegal or improper purpose. The petitioner must do more than just assert the improper exercise of discretion; he/she must provide evidence to support the claim. I do not believe that Petty Officer [REDACTED] done so. The evaluation report itself represents the opinion of the reporting senior. Nothing provided in the petition shows that the reporting senior acted for illegal or improper purposes or that the report lacked rational support.

c. The member alleges the reports in question are unjust due to not being counseled. In accordance with reference (a), Annex C, counseling on performance is mandatory. While use of the evaluation report is encouraged in the counseling process, counseling on performance may occur in different ways. Written documentation of counseling is not required.

d. Reference (a), Annex S, Paragraph S-3 states: "A member has the right to submit evaluation report inputs, and has the duty to do so if requested by the rater or reporting senior". The member indicated she submitted her evaluation inputs, however, whether or not the member's inputs are used is the right of the reporting senior.


e. Further review of the member's record revealed the evaluation report for the period 1 April 1995 to 15 March 1996 missing from her record. If the member will forward a copy of the report we will have it placed in her digitized record.


f. The evaluation reports appear to be procedurally correct. An evaluation report is an opinion document that reflects the reporting senior's evaluation of the member's performance. In these cases, the reporting senior determined that the petitioner did not perform at the level expected. The reporting senior confirmed his evaluation in his endorsement to her statement.

g. An evaluation report does not have to be consistent with previous or subsequent reports. Each evaluation report represents the judgment of the reporting senior during a particular reporting period.

h. The member states she was awarded the Navy Achievement Medal for the period 16 March 1996 to 15 March 1997. The Navy Achievement Medal the member refers to was not approved until 3 August 1998 and covers the period March 1997 to August 1998. The medal was for an end of tour award. Per reference (a), Annex N, Paragraph N-14.j, awards cannot be commented on until the award has been received.

h. The member does not prove the reports to be unjust or in error.

3. We recommend the member's record  changed.


Head, Performance
Evaluation Branch



-1131-99

DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

1610
PERS-311
21 August 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: PERS/BCNR Coordinator (PERS-00ZCB)

Subj: [REDACTED] USNR [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of her performance reports for the period 16 March 1999 to 15 March 2000.

2. Based on our review of the material provided, we find the following:

a. A review of the member's headquarters record revealed the report in question to be on file. It is signed by the member acknowledging the contents of the reports and her right to submit a statement. The member indicated she did not desire to submit a statement. However, the member submitted a statement and the statement and reporting senior's endorsement is properly reflected in her digitized record.

b. The member alleges the performance evaluation in question is unsupported by the evidence, and is in fact not a neutral and objective assessment of her recent work, but rather retributive in nature; and not being given a chance to perform as she has in the past, and not being rated fairly for the performance that she's renders to the safety office.

c. The performance evaluation in question appears to be procedurally correct. The reporting senior may properly comment or assign grades based on performance of duty or events that occurred during the reporting period. Nothing provided in the petition demonstrates that the reporting senior acted improperly, violated requirements, or that he abused his discretionary authority in evaluating Petty Officer [REDACTED] performance.

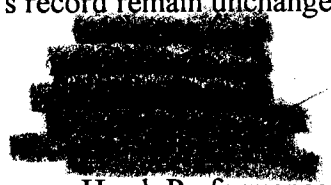
d. It may be true that the performance evaluation presented to the member during her mid-term counseling is not the same report that was submitted; however, until a report is actually accepted by NPC, it is not final. It is the reporting senior's prerogative to change his/her mind regarding trait marks and comments on a performance evaluation and may change the report in any way that he/she desires. The grades and comments on a fitness report reflect the reporting senior's perception of the subordinate's performance.

e. Any member has the right to submit performance evaluation input, however, it is the reporting senior's determination as to whether he/she will use all or a portion of that input. In whatever manner the report is developed, it represents the judgment and appraisal authority of the reporting senior.

f. An evaluation report does not have to be consistent with previous or subsequent reports. Each evaluation report represents the judgment of the reporting senior during a particular reporting period.

g. The member does not prove the reports to be unjust or in error.

3. We recommend the member's record remain unchanged.

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Head, Performance
Evaluation Branch